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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,832	09/12/2003	Donald P. Dennis	170404-1011	7858
24973	7590	03/02/2005		
LAW OFFICE OF SANFORD J ASMAN 570 VININGTON CT DUNWOODY, GA 30350			EXAMINER MELLER, MICHAEL V	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,832

Applicant(s)

DENNIS ET AL.

Examiner

Michael V. Meller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Domb et al. (paragraphs 20, 84, 100), Lawlor (col. 1, lines 5-25, col. 2, lines 60-col. 3 line 25, col. 6, lines 50-end, col. 8, lines 1-13, col 21, lines 20-28), Shefer et al. (paragraphs 81, 101, 128, the claims), Hollenbeck (abstract, col. 2, lines 53-end), Wilkins et al. Jr., paragraphs 8, 9, 52, 54, 56, and the claims), Rajaiah et al. '007 (col 2, lines 51-55, col. 7, lines 30-43, col. 11, lines 29-47, col. 14, lines 43-53, examples 13-19), Rajaiah et al. '406 (col. 2, lines 35-40, col. 7, lines 1-25, col. 13, lines 1-25, examples 13-19), Guay et al. (col. 3, lines 20-33, col. 5, lines 35-55, col. 9, lines 25-45, col. 13, lines 1-35), or Rajaiah et al. '108 (paragraphs 12, 36, 51, 60, 69, 78, 85).

The references each teach as indicated above that a grapefruit seed extract is in a form for use by a fogging device, i.e. spray or aerosol. Furthermore, each extract inherently contains the grapefruit quarternary compound and glycerin since they come from the grapefruit seed extract which is taught.

Applicants have only stated that claim 1 as amended, is considered to be patentable over the cited art. Applicant argues that the art does not teach environmental treatment using a formulation which can be administered as a fog, or as a heated fog, using a fogging machine. Fact is, as noted above, the references teach that the grapefruit seed extract is in a form for use in a fogging device. Spray or aerosol as

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taught by the reference can be used in airborne administration through the use of a fogging device.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domb et al. (paragraphs 20, 84, 100), Lawlor (col. 1, lines 5-25, col. 2, lines 60-col. 3 line 25, col. 6, lines 50-end, col. 8, lines 1-13, col 21, lines 20-28), Shefer et al. (paragraphs 81, 101, 128, the claims), Hollenbeck (abstract, col. 2, lines 53-end), Wilkins et al. Jr., paragraphs 8, 9, 52, 54, 56, and the claims), Rajaiah et al. '007 (col 2, lines 51-55, col. 7, lines 30-43, col. 11, lines 29-47, col. 14, lines 43-53, examples 13-19), Rajaiah et al. '406 (col. 2, lines 35-40, col. 7, lines 1-25, col. 13, lines 1-25, examples 13-19), Guay et al. (col. 3, lines 20-33, col. 5, lines 35-55, col. 9, lines 25-45, col. 13, lines 1-35), or Rajaiah et al. '108 (paragraphs 12, 36, 51, 60, 69, 78, 85).

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To use the specific amounts claimed is obvious since one would want to optimize the desired results. It is also obvious to use the distilled water and the glycerin since as shown in the references, such ingredients are well known to be added.

Applicant argues the same as above. See above comments.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domb et al. (paragraphs 20, 84, 100), Lawlor (col. 1, lines 5-25, col. 2, lines 60-col. 3 line 25, col. 6, lines 50-end, col. 8, lines 1-13, col 21, lines 20-28), Shefer et al. (paragraphs 81, 101, 128, the claims), Hollenbeck (abstract, col. 2, lines 53-end), Wilkins et al. Jr., paragraphs 8, 9, 52, 54, 56, and the claims), Rajaiah et al. '007 (col 2, lines 51-55, col. 7, lines 30-43, col. 11, lines 29-47, col. 14, lines 43-53, examples 13-19), Rajaiah et al. '406 (col. 2, lines 35-40, col. 7, lines 1-25, col. 13, lines 1-25, examples 13-19), Guay et al. (col. 3, lines 20-33, col. 5, lines 35-55, col. 9, lines 25-45, col. 13, lines 1-35), or Rajaiah et al. '108 (paragraphs 12, 36, 51, 60, 69, 78, 85) taken with JP 02286608, Kuno et al. (col. 11, lines v35-45, col. 34, lines 40-col. 35, line 17, see claims), Kuhnle et al. (col. 5, lines 1-60), Libis et al. (ex. 26, 27), Harich et al. '212 (abstract, col. 1, line 55-col. 3, line 15), Harich et al. '548 (abstract, col. 2, line 25-40), Harich et al. '578 (abstract), Harich et al. '647 (abstract), or Klein (col. 2, line 50-end).

The primary references teaches what is above. The secondary references teach that the glycerin, propylene glycol and distilled water are routinely added to such compositions containing grapefruit.

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To use the specific amounts claimed is obvious since one would want to optimize the desired results. It is also obvious to use the distilled water and the glycerin since as shown in the references, such ingredients are well known to be added.

Applicant argues the same as above. See above comments.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-

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0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM